

REMARKS

This is responsive to the Office Action mailed on November 28, 2005. In that Office Action, claims 1, 5 and 7 were allowed, claims 8, 9, 16-20 and 23-31 were rejected and claims 2, 4, 10-13, 15 and 22 were objected to. Claims 2, 4, 8, 16, 23 and 27 have been amended, claim 10 has been cancelled and new claims 32, 33 and 34 have been added. The application now include claims 1-2, 4-5, 7-9, 11-13, 15-20 and 22-34.

The Office Action objected to claims 2 and 4 because of two informalities. In claim 2, line 4, the word "engage" should be "engages". In claim 4, line 2 the word "surfaces" should be "surface". Both claims have been amended to correct these typographical errors.

Next, the Office Action rejected claims 8 and 9 under 35 U.S.C. § 102(b) as being anticipated by the Day U.S. Patent No. 4,545,572. The Office Action also objected to claims 10-13 and 15 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The subject matter of claim 10 has been placed in claim 8 and claim 10 has been cancelled. Therefore, it is believed that claim 8 is in allowable form. In view of this, it is requested that the rejection of claim 8 along with its dependent claims 9, 11-13 and 15 be considered and allowed.

Next, the Office Action rejected claims 16-20 under 35 U.S.C. § 103(a) as being unpatentable over the Phillips U.S. Patent No. 6,736,775 in view of Roussouly et al. U.S. Patent No. 5,810,817. Similarly, claims 16-19 were rejected under 35 U.S.C. § 102(e) as being anticipated by the Winquist et al. U.S. Patent No. 6,613,049. With respect to each of the rejections, the Examiner on pages 4 and 5 of the Office Action, in responding to applicant's arguments submitted in a response filed on September 8, 2005, noted that the applicant was not claiming that each of the raised portions has an arcuate surface. Both independent claims 16 and 23 have now been amended to state that each of the raised portions has an arcuate surface. This amendment clearly distinguishes the claims from the Winquist et al. patent and the combination of Phillips and Roussouly et al. Claim 16 has also been further amended to change the word "engage" in the last line of the claim to "are for engaging". Otherwise, it appears to the

undersigned attorney that the cross-sectional rod was part of the claim but it is clear from the preamble of claim 16 that it is not.

It is now believed, for the reasons argued in the response of September 8, 2005, that independent claim 16 and its respective dependent claims 17-20 and 22 and independent claim 23 along with its respective dependent claims 24-26 are in allowable form and reconsideration and allowance are respectfully requested.

Lastly, the Office Action rejected claims 27-31 as being anticipated by Winquist et al. U.S. Patent No. 6,613,049. Regarding these claims, the Office Action alleges that Winquist et al. discloses a stop or "pin" 97 between the first and second legs citing column 11, lines 38-58.

Claim 27 has been amended to state that the stop extends between the first and second legs wherein the stop limits movement of the first and second legs towards each other and that the purpose of the stop that is to prevent excessive clamping force. The pivot pin 97 described in the Winquist et al. patent is positioned in pin receiving zone 96 of the wall member 95 as illustrated in Figure 12 of Winquist et al. It is clearly not between the leg portions of the clamp disclosed in Winquist et al. Furthermore, the purpose of the pin 97 is to prevent crushing or bending of the wall member 95 (column 11, lines 56-98), while enhancing the inherence spring force provided by wall member 95. The purpose of the stop of claims 27-31 is to prevent an excessive force from being applied to the field post 16 by the first clamping member 20 (page 6, lines 20-28 of the present application).

In view of the above, it is now believed that claim 27 and its respective dependent claims 28-31 are also in allowable form, and reconsideration and allowance are respectfully requested.

Reconsideration and allowance of all of the claims in the application are respectfully requested.

In the Office Action that was mailed on March 11, 2005, the Examiner requested applicant to elect a single disclosed Species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Claim 1 was identified as being generic.

In a response to that Restriction Requirement, applicant identified claims 1-5, 7-13, 15-20 and 22-31 as readable on Species I of Figure 2. In the next Office Action mailed on June 3, 2005, the Examiner accordingly withdrew claims 6, 14 and 21 from reconsideration as reading on a non-elected Species. Applicant in a response to that Office Action cancelled withdrawn claims 6, 14 and 21. Cancelled claims 6, 14 and 21 are hereby added as new claims 32, 33 and 34, respectively, each claim having the same dependency as its predecessor claim. It is believed that the claims are now allowable since the claims that they originally depended from are now also in allowable form. In view of this, entry and allowance of new claims 32-34 is requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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